IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2696 OF 2005

Ranjamal Assomal Dodaja & Anr. : Petitioners

V/s.

Shamoonbhai Dawoodbhai Mala (deceased)

& Ors. : Respondents

...

Mr.H.N.Kore for the petitioners.

None present for the respondents.

...

CORAM : S.A. BOBDE, J.

June 22, 2005.

P.C.:

1. By this petition, the petitioners, who are the surviving defendants in the suit filed by the respondents, have challenged the order of impleadment of one Ashok Nandu Shetty as a plaintiff in the suit. Ashok Nandu Shetty has been impleaded on the sole ground that he is a purchaser of the suit property.

2. Mr.Kore, learned counsel for the petitioners, submit that the impleadment is erroneous since it is being done under Order 1 Rule 10. According to the learned counsel for the petitioners, since the original plaintiff no.1

died and no steps for bringing his legal representatives have been taken, the purchaser of the property could not have been impleaded. It is difficult to accept this contention. This contention would have been worth considering if the suit has abated as a whole. That is not the case here. The suit was filed by the plaintiff nos.2 and 3 along with other plaintiff who was still on record as the plaintiff. They seem to have accepted the fact that the property was transferred in the name of the newly impleaded party i.e. Ashok Nandu Shetty. Therefore, the impleadment is not as an heir of the plaintiff no.1. In the circumstances, Order 1 Rule 10 is available.

3. The second contention on behalf of the learned counsel for the petitioners is that the suit has abated since some defendants have died i.e. this fact has no bearing on the impleadment of the newly added plaintiff.

4. Lastly, the learned counsel for the petitioners, relied on a judgement of this Court in Jayalaxmi Janardhan v. Lilachand (1998 (3) Mah.L.J. 618) in which this Court has held that the specific provisions of Order 22 cannot be negatived by indirectly making an application after lapse of time either under section 151 or under Order 1,

Rule 10(2). The ratio of that decision has no application to the present case since in that case, the suit had abated.

5. In this view of the matter, there is no merit in the petition which is hereby dismissed. The petitioner shall be at liberty to raise the question of abatement at an appropriate state.

Sd/-

S.A. BOBDE, J.